

S.L. 2013-316

Sales Tax Law Changes

Effective January 1, 2014



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Sales Tax Rate Changes



EFFECTIVE JANUARY 1, 2014

- *Manufactured homes*
2%, \$300 maximum to 4.75%

- *Modular homes*
2.5% to 4.75%
County tax sharing repealed

History re: Manufactured Homes



- **Prior to 1989**
 - Manufactured homes considered motor vehicles
 - Motor vehicles were subject to a sales tax of 2% with a cap of \$300
- **1989**
 - General Assembly created the Highway Trust Fund
 - Funded Highway Trust Fund, in part, through Highway Use Tax
 - ✦ Exempted motor vehicles from sales tax
 - ✦ Imposed highway use tax on motor vehicles at the rate of 3%
 - Established separate sales tax on manufactured homes to distinguish them from motor vehicles
 - ✦ Continued to tax manufactured homes at the same rate of 2%/\$300 cap
 - ✦ State only sales tax; no local sales tax
- **2014**
 - S.L. 2013-316 increases sales tax rate from 2%/\$300 cap to the State general rate of 4.75%
 - Does not expand local sales tax base to include manufactured homes

History re: Modular Homes



- **Prior to 2004**
 - Different rates applied depending on the type of frame
 - ✦ “On-frame,” or steel frame homes, were taxed the same as manufactured homes
 - ✦ “Off-frame,” or wood frame homes, were taxed at the general rate.
- **2004**
 - Modular homes distinguished from manufactured homes
 - Rate set at 2.5% with no cap
 - 20% of taxes collected distributed to counties to offset local sales tax revenue loss
- **2014**
 - S.L. 2013-316 increases sales tax rate from 2.5% to the State general rate of 4.75%
 - Does not expand local sales tax base to include modular homes
 - Repeals local tax sharing provision

Manufactured & Modular Homes



- To our knowledge, no clarifying changes needed



Sales and Use Tax Exemptions Repealed



EFFECTIVE JANUARY 1, 2014

- *Nutritional supplements sold by a chiropractor at the chiropractor's office to a patient*
 - *Meals served to students in dining rooms regularly operated by educational institutions*
- *Newspapers sold through street vendors, door-to-door carriers, and vending machines*

Nutritional supplements sold by chiropractors



G.S. 015-164.13(13c)

*Nutritional supplements sold by a
chiropractic physician at a chiropractor
office to a patient as part of the patient's
plan of treatment*

History of Exemption

- Exempt since October 1, 1997
- Nutritional supplements do not require a prescription
- No law requires supplements to be sold only by health care provider
 - By practice, some may be provided only through health care providers



No clarifying changes needed



Meals sold in Dining Halls



105-164.13(27)

Prepared food and food served to students in dining rooms regularly operated by State or private educational institutions or student organizations thereof

History of Exemption for Meals

- Exemption existed since at least 1957
- Meals served in dining rooms regularly operated by State or private educational institutions when the meals are provided exclusively for students



History of Exemption for Meals



Which Meal Plans Can I Choose?

Fall 2013 / Spring 2014 Meal Plans

Price Per Semester

Traditional Housing Students

Non-Traditional Housing & Commuters

Unlimited Plus \$150

Unlimited meal swipes per semester (one meal swipe per hour) plus \$150 in Food Dollars per semester

\$1,698



14 plus \$225

14 meal swipes per week plus \$225 in Food Dollars per semester

\$1,598

10 plus \$300

10 meal swipes per week plus \$300 in Food Dollars per semester

\$1,598

Seahawk 140 plus \$425

140 meal swipes per semester plus \$425 in Food Dollars per semester

\$1,598

Seahawk 90 plus \$425

90 meal swipes per semester plus \$425 in Food Dollars per semester

\$1,200

Seahawk 60 plus \$300

60 meal swipes per semester plus \$300 in Food Dollars per semester

\$825

Unlimited Lunch plus \$250

Unlimited meal swipes Monday - Friday from 10 a.m. - 4 p.m. at Dub's Cafe, Wagoner Hall, Wag Out, and from 2:30 p.m. - 4 p.m. at The Landing plus \$250 in Food Dollars per semester

\$850

Seahawk 700

\$700 in Food Dollars per semester plus option to purchase additional meal swipes as needed

\$700

Seahawk 350

\$350 in Food Dollars per semester plus option to purchase additional meal swipes as needed

\$350

Food Dollars are like cash, but the benefit of purchasing Food Dollars is that your purchase is tax free! **

Current Taxability of Meals



Taxable

- Meals purchased with cash
- Meals purchased with food dollars at locations not operated by the school's food service

Exempt

- Meal purchased with meal swipes
- Meals purchased with food dollars at locations operated by the school's food service

Issues with Taxing Meal Plans

Confusion as to responsible retailer

- Where is the taxable transaction?
 - Between the institution and the provider?
 - ✦ Public universities exempt from sales tax
 - ✦ Private universities entitled to a sales tax refund
 - Between the institution and the student?

Confusion as to taxable transaction

- Institutions sell “***meal plans***” not meals per se
 - Exemption is for meals sold
 - Tax applies to sale of meal
 - Tax due at the time a meal is purchased

Policy Options



- **Do nothing**
 - Confusion as to who is the retailer responsible for collection of sales tax
 - Confusion as to the taxable transaction
- **Impose sales tax on the gross receipts derived from prepaid meal plan transactions by colleges and universities**
 - Similar situation with prepaid telephone calling service
 - 2001 began taxing prepaid telephone calling service as personal property at the point of sale
 - Clarifies the taxable transaction and the responsible retailer

Newspapers



105-164.13(28)

Sales of newspapers by newspaper street vendors, by newspaper carriers making door-to-door deliveries, and by means of vending machines

History of Exemption for Newspapers

- **Similar products taxed differently**
 - **Taxable**
 - Over the counter sales
 - Digital sales
 - Sales by subscription delivered through the mail
 - **Exempt**
 - Sales by independent newspaper carriers making door-to-door deliveries
 - Sales by subscription delivered door-to-door
 - Sales through vending machines
 - Sales by persons physically selling as street vendors
- 
- **1957**
 - Newspapers exempt
 - **1961**
 - Blanket exemption repealed
 - Exemption for sales of newspapers by or to independent newspaper vendors engaged exclusively in peddling newspapers and not selling in excess of 1000 copies per week
 - **2009**
 - Equalized tax treatment of magazines
 - **2013**
 - Equalized tax treatment of newspapers

Exemption for Vending Machine Sales



- Two exemptions for sales made through a coin-operated vending machine
 - Sales price of item is one cent
 - ✦ Enacted in 1967
 - 50% of sales price, other than tobacco
 - ✦ Enacted in 1987, effective July 1, 1989
- Newspapers sold through a vending machine
 - 100% exempt – Sales prior to January 1, 2014
 - ✦ G.S. 105-164.13(28)
 - 50% exempt – Sales on or after January 1, 2014
 - ✦ G.S. 105-164.13(50)

Policy Options

- Do nothing
 - Newspapers sold through coin-operated vending machines taxed on a lesser amount than other newspapers
 - Similar transactions taxed differently
- Exclude newspapers from 50% vending machine exemption
- Repeal 50% exemption for vending machine sales
- Repeal vending machine exemption for sales of 1¢



Sales Tax on Admission Charges for Entertainment Activities



EFFECTIVE JANUARY 1, 2014

For admissions to a live event where the initial sale of tickets to that event occurs on or after that date, the sales tax under G.S. 105-164.4 applies

For admissions to a live event where the initial sale of tickets for that event occurs before that date, the gross receipts tax under G.S. 105-37.1 applies

Imposition of Tax

4.75% State sales tax
Plus Local sales tax



- *Live events*
- *Motion pictures or films*
- *Other entertainment activities for which an admission is charged*

Gross Receipts Privilege Taxes Repealed



Live Events

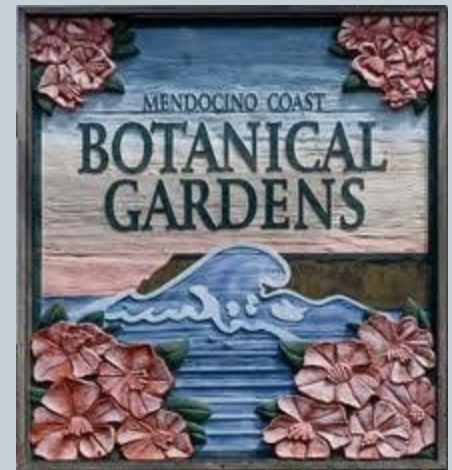
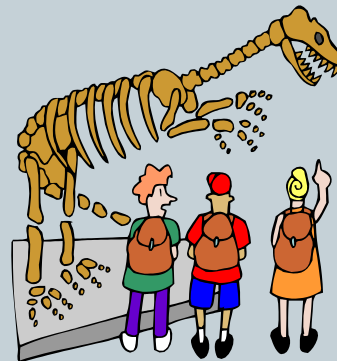
- 3% gross receipts tax
- Live events
 - College sporting events
 - ✦ 23 other states tax
 - Professional sporting events
 - ✦ 37 other states tax
 - Concerts/cover charges
 - ✦ 30+ states
- Numerous exemptions

Motion Pictures & Film

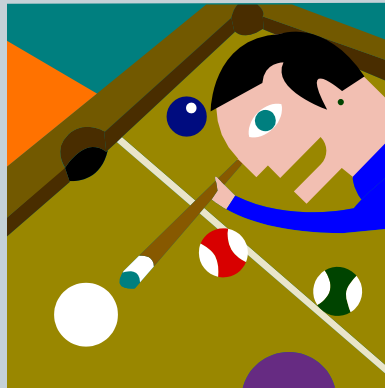
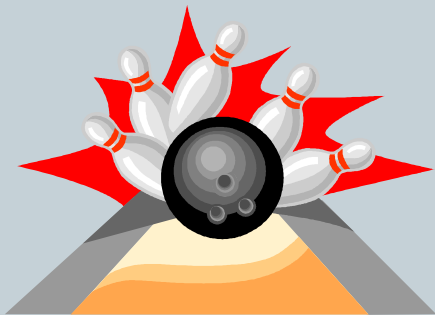
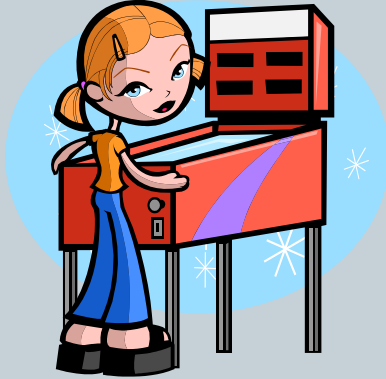
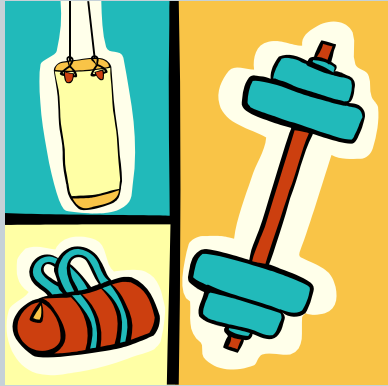
- 1% gross receipts tax
 - Prior to July 1, 1997
 - ✦ \$100 annual tax on outdoor theaters and \$200 annual tax on indoor theaters
 - July 1, 1997 – October 1, 1998
 - ✦ By default, subject to 3% gross receipts tax
 - October 1, 1998
 - ✦ 1% gross receipts tax

Other Entertainment Activities

- Museums, cultural sites, gardens, exhibits, shows for which an admission is charged
 - Recommended by several study committees
 - 31 states tax admission to cultural events
 - 36 states tax admission to amusement parks



Entertainment Activities NOT Included in Base Expansion



- Participatory sports

- Billiard parlors
27 states tax
- Bowling alleys
27 states tax
- Membership fees in private clubs
23 states tax
- Pinball & mechanical amusements
19 states tax

Exemptions from Tax



*Currently 14 exemptions from gross receipts
tax on admission charges*

*Effective January 1, 2014
5 exemptions from sales tax on admission
charges*

Exemptions from Gross Receipts Tax on Live Entertainment

- 
- Local, non-paid talent
 - NC Symphony
 - Agricultural fairs
 - Outdoor historical dramas
 - Elementary and secondary school events
 - First \$1,000 derived from amusements promoted & managed by civic organizations
- Youth athletic contest
 - Performing & visual arts centers
 - Nonprofit arts organizations
 - Teen centers
 - Indian reservation
 - Arts festivals
 - Community festivals
 - Farm-related amusements

Exemptions Retained

- 
- Local, non-paid talent
 - NC Symphony
 - **Agricultural fairs**
 - Outdoor historical dramas
 - **Elementary and secondary school events**
 - First \$1,000 derived from amusements promoted & managed by civic organizations
- **Youth athletic contest**
 - Performing & visual arts centers
 - Nonprofit arts organizations
 - Teen centers
 - Indian reservation
 - **Arts festivals**
 - **Community festivals**
 - Farm-related amusements

Exemptions from Sales Tax on Admissions



- Elementary or secondary school sponsored event
- Agricultural fairs
- Festival or other entertainment activity that lasts no more than 7 consecutive days and is sponsored by a NP entity and the entire proceeds are used exclusively for the entity's NP purpose
- Youth athletic contest sponsored by a NP where participants are less than 20 years old at time of enrollment
- **State attraction**

What is a State Attraction?

S.L. 2013-414, Section 58(3)



- PED study on State attractions
 - February 14, 2012
 - Administered and operated by the DCR or DENR
 - Attractions that charge admission fees
 - ✦ Zoo and aquariums
 - ✦ Tryon Palace
 - ✦ NC Battleship
 - ✦ Transportation Museum
- Physical place
 - Does the physical place have to be State property?
- Supported with State funds
 - How much support?
 - Recurring appropriation?
 - Operational funds?
- Offers cultural, educational, historical, or recreational opportunities

Taxable or Exempt?



- University junior varsity sporting events
 - Captured by youth athletic event exemption?
 - No
- Performing arts events at public universities
 - Captured by State attraction exemption?
 - No
- NC Symphony and outdoor dramas
 - Captured by “two events” by nonprofits?
 - No
- Arts Council grantees
 - Captured by State attraction exemption since receive some state funds?
 - Unclear
- Grassroots science program recipients
 - Captured by State attraction exemption since receive some state funds?
 - Unclear

Policy Options



- **Do nothing**
 - Department of Revenue would need to interpret law
- **Clarify exemptions**
 - Define state funds differently?
 - Limit to sites administered and operated by DCR and DENR?
 - Clarify NP exemption and youth sporting events?
- **Eliminate some or all of the exemptions**
 - Elementary and secondary school events
 - Agricultural fairs
 - Nonprofit events
 - Youth sporting events
 - State attractions

Sales Tax on Service Contracts



EFFECTIVE JANUARY 1, 2014

A service contract is a warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract by which the seller agrees to maintain or repair tangible personal property

FTA: Taxation of Repair Services

- Service contracts sold at the time of sale of TPP
 - ~31 states tax
 - SC, TN, and VA tax
- Repair labor generally
 - ~24 states tax
- Repair labor on motor vehicles
 - ~21 states tax
- Repair labor on electronics
 - ~24 states
- Repair labor on other TPP
 - ~24 states



Applicability of Tax & Exemptions

- Tax applies to service agreement on tangible personal property, unless exempt
 - Appliances
 - Electronics
 - Phones
 - Motor vehicles
- **Exemptions**
 - Item not subject to sales tax
 - Utility assets
 - Items for which motorsports refund allowed
- Tax does not apply to real property
 - HVAC systems
- Tax does not apply to repair of specific item in a single transaction
 - Exemption for installation charges separately stated on bill not repealed
 - ✦ 105-164.13(49)
 - May need clarification

Applicability of Tax



Policy Questions

- Must the service contract be sold in conjunction with the property covered by the contract?
- Must the service be provided by the same person selling the property covered by the contract?
- Are charges for the renewal of a service contract subject to tax?
- Are periodic payments for a service contract subject to tax?

Policy Considerations

- Equitable treatment of similar transactions
- Ease of administration
- Clarity of understanding for consumer & retailer

South Carolina



- Taxes the sale of a maintenance contract purchased at the same time the tangible personal property is purchased, unless exempt
 - Tax does not apply to maintenance contract purchased after the tangible personal property is purchased
 - Tax does not apply to third party providers
 - Tax does not apply to recurring contracts or contract renewals
- Exemptions
 - Motor vehicle extended service contracts and warranty contracts

Tennessee



- **Taxes warranty or service contracts**
 - Tax applies to contract
 - Tax applies to third party providers
 - Tax applies to recurring contracts and to contract renewals
 - Tax not limited to contracts sold at the same time the product is purchased
 - No exemptions
- **Broadest of bases**
 - Also taxes repair labor
 - Also taxes installation charges

Virginia



- Defines “maintenance contract” as an agreement whereby a person agrees to maintain or repair an item of tangible personal property over a specified period of time for a fee that is determined when the agreement is made
 - Tax applies to contract
 - Tax applies to third party providers
 - Tax applies to recurring contracts and to contract renewals
 - Tax not limited to contracts sold at the same time the product is purchased
- Taxation
 - Labor only – exempt
 - Parts only – 100% taxable
 - Parts & labor – 50% taxable

Policy Questions



- When does tax apply?
 - When the service agreement is purchased?, then no change needed
 - When the service agreement is purchased at the same time the property covered by the agreement is purchased?, then clarifying change needed
 - ✦ “... purchased at the same time item purchased ...”
- Does tax apply to service contracts sold by or on behalf of third party providers?
 - Yes, then clarifying change needed
 - ✦ “... by which the provider (not the seller) agrees to ...”
 - No, then no change needed
- Does tax apply to renewals of service contracts and to recurring service contracts?
 - Yes, no change needed
 - No, clarifying change needed